

1 IN THE UNITED STATES DISTRICT COURT
2
3 MIDDLE DISTRICT OF NORTH CAROLINA
4
5 UNITED STATES OF AMERICA)
6 vs.) Case No. 1:12CR23-1
7 ANTWAN O'BRIAN LLOYD,) Greensboro, North Carolina
8 Defendant.) August 21, 2012
9) 2:40 p.m.

APPEARANCES:

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24 Proceedings reported by stenotype reporter.
Transcript produced by Computer-Aided Transcription.

1 || Greensboro, North Carolina

2 August 21, 2012

3 (At 2:40 p.m., proceedings commenced.)

4 MR. MEINECKE: Good afternoon, Your Honor.

5 THE COURT: Good afternoon, Mr. Meinecke.

6 MR. MEINECKE: This next matter is the United
7 States versus Antwan O'Brian Lloyd, Case No. 1:12CR23-1.
8 Mr. Jones is present on behalf of defendant. This matter is
9 on for sentencing.

10 MR. JONES: Good afternoon, Your Honor.

11 THE COURT: Good afternoon, Mr. Jones. Let's see.
12 Give me just a moment.

13 All right. Mr. Jones, have you received a copy of
14 the presentence report and reviewed it with Mr. Lloyd?

15 MR. JONES: Yes, Your Honor.

16 THE COURT: Now, as I understand it, there are --
17 I classify it as three different objections, but arguably
18 four. One of the objections relates to whether or not the
19 offenses set out in paragraphs 31 and 40 are properly
20 considered as career offender predicate offenses.

21 Second objection relates to the plus four for
22 possession of the firearm during the commission of another
23 felony offense.

24 And then, finally, Mr. Lloyd contends that the
25 Court should depart or arguably vary because of his efforts

1 at attempting to assist the Government, and I guess it's
2 a -- as a part of that, an upward departure is unwarranted
3 as set out in the presentence report.

4 Other than those matters, are there any other
5 objections to the presentence report?

6 MR. JONES: There is one brief one, and I'm not
7 sure -- I discussed it with Mr. Meinecke and the probation
8 office. The maintaining a dwelling count was a continuing
9 offense that ran from January 1, 2011, to March 25, 2011.
10 The cocaine base that was attributed to Mr. Lloyd ran for a
11 full calendar year from March 25, 2011, backwards, and so it
12 included weight amounts that extended back nine months.
13 Collectively, it was a total of 42.5 grams. If you look at
14 only the time frame in the continuing offense, it would have
15 been about 12 grams.

16 It ends up -- or it may not end up making a
17 difference, Your Honor, depending on the Court's ruling as
18 it relates to the career offender. For that reason, Your
19 Honor, I'd ask the Court to -- if it's going to take up the
20 objections, to take up the career offender objections first
21 because both the drug weight objection and the gun
22 enhancement objection would not be necessary corresponding,
23 and I would then ask the Court to rule that it wouldn't
24 consider either of those in sentencing under Rule
25 32(i)(3)(B).

1 THE COURT: All right. And let me -- Mr. Lloyd,
2 let me ask you first, have you reviewed the presentence
3 report with Mr. Jones?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you generally agree with the
6 report with the exception of the objections that
7 Mr. Jones -- that I have just described?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. You may have a seat then,
10 Mr. Lloyd.

11 All right. Mr. Meinecke, at this point I think
12 the career offender remains -- let me see here --
13 paragraph 31 offense was a 2000 arrest and 2001 conviction
14 for felony common law robbery. Mr. Jones' objection to
15 that, as I understand it, but clarify in a minute, is that
16 he was never sentenced to and never actually served more
17 than a year imprisonment for that offense.

18 And then with respect to paragraph 40, the felony
19 possession with intent to sell and deliver cocaine for which
20 Mr. Jones -- not Mr. Jones -- Mr. Lloyd received a sentence
21 of 9 to 11 months in prison, and the probation office has
22 denoted this as a Class H felony with a prior record level
23 of four which resulted in a presumptive imprisonment range
24 with a maximum penalty of 14 months. That's at
25 paragraph 40.

1 I have at this point, Mr. Jones, reviewed the
2 pleading with respect to the objections, but I'll hear from
3 you at this time.

4 MR. JONES: Yes, Your Honor. This Court is
5 dealing with *Simmons* that's been out since September of last
6 year, almost a year now, and what it did is it took the
7 movement of *Carachuri-Rosendo* and *Rodriguez*, and it said
8 let's not look at hypothetical individuals, let's look at
9 defendants that are in front of us. And specifically what
10 it said, as it relates to people who had North Carolina
11 prior felony convictions, it said, we're not going to look
12 at just what the conviction was and what that class was. We
13 have to do some individual determination, and *Simmons* says
14 look at the box that they fit in. What was the class? What
15 was the prior record level? But the only way to do that,
16 Your Honor, is to look at the judgment, and so that's what
17 we do.

18 And we go back, and we have these judgments; and
19 then, according to *Simmons*, we take the actual document that
20 sent the person to jail, and then we ask a hypothetical
21 question. Well, what could a hypothetical question -- what
22 could a hypothetical defendant in this box have gotten?

23 Paragraph 40, I think, is the perfect example
24 because we have that judgment. We're told to look at this
25 judgment, and we know that based on the document I'm

1 holding, which is that judgment, he could not have gone to
2 jail for more than one year, could not have gone -- could
3 not have gone for more than 11 months. This Court is asked
4 to ask a hypothetical question, what could somebody else
5 have gotten? And I don't think that *Rodriguez* and
6 *Carachuri-Rosendo* lead to that conclusion.

7 Since we are looking at this document, I think we
8 should look at this document, and this answers the question
9 of whether or not this is a felony for federal sentencing
10 purposes. And I understand that there's some instructive
11 case law about how *Simmons* is to be applied. I believe I've
12 cited that in my objections to the Court. But I don't think
13 that part of fulfilling *Simmons* complies with what the Court
14 was asked to do, what the Supreme Court has said that we
15 should be doing, in sentencing defendants.

16 I think where we have a judgment in front of us,
17 and there's no doubt about what that judgment says, and
18 there's no doubt that this defendant, Mr. Lloyd, could not
19 have gone to jail for more than a year based on this
20 judgment, that that's where the Court's inquiry should end.
21 We don't need to ask a hypothetical question when we know
22 what actually happened to Mr. Lloyd in this case. That's my
23 argument as it relates to --

24 THE COURT: Ultimately, under your analysis, if
25 the judgment has been imposed, the judgment is the final

1 determination; and even though he may have been an H felony,
2 prior record level four, for purposes of sentencing, and the
3 presumptive range gives more than 12 -- or the presumptive
4 range plus the other little chart, as I'll refer to it, on
5 the maximum end -- even though that may say in this range
6 this is the maximum sentence, once that judgment and
7 sentence are imposed, that's it, in your analysis.

8 MR. JONES: That's correct, Your Honor, because
9 asking what the highest somebody could have gotten in the
10 presumptive range for this class and record level seems the
11 same as saying what could a presumptive person have gotten
12 at record level six with the aggravating factors? We know
13 for certainty what happened in the cases below. There's no
14 reason to ask an abstraction when we have the actual facts
15 of the judgment.

16 THE COURT: All right. Mr. Meinecke?

17 MR. MEINECKE: Your Honor, as the Court is aware,
18 and I understand that the argument that the defense is
19 putting forth at this point in time, that is not what
20 *Simmons* stands for. As Mr. Jones has indicated, they have
21 cited this contrary case law in their position paper. As I
22 understand it, the current law is if the defendant's
23 particularized criminal history is such that he was exposed
24 to a sentence exceeding one year, in other words, he could
25 have received more than one year, it is a felony, a federal

1 felony for our purposes, and, therefore, the conviction
2 should count against him.

3 THE COURT: And is the same -- is it the same
4 argument as to paragraph 31, or is there a slightly
5 different --

6 MR. JONES: There is a slightly different argument
7 there. This may have more to do with the mechanics of
8 proving what a person was actually sentenced to. This
9 case -- or this paragraph adds the loop of what to do with
10 suspended sentences in North Carolina. As the Court knows,
11 a defendant in North Carolina at the state court level
12 stands before the Court, and the judge can either impose
13 active time, split time, or a suspended sentence. A person
14 who gets a suspended sentence does not, in many cases, ever
15 do any active time in jail.

16 You then have to look to see if a person did get
17 active time, and what we have in this case and what's in the
18 discovery here -- I'm not sure what has made its way to the
19 Court, but what's in the discovery in this case is a
20 judgment from several months after the original judgment in
21 which case the defendant elected to serve the suspended term
22 of his sentence. He was originally sentenced to a term of
23 15 to 18 months, Your Honor, and that was suspended.
24 Afterwards, he elected to serve part of that, on account of
25 a probation violation; but when he did that, he already had

1 293 days credit for a separate offense.

2 And so if the Court looks specifically at
3 paragraph 31, it shows that on July 29, 2003, he elected to
4 serve, and then he was released on January 7, 2004. That's
5 the amount of time that the judgment in this case shows that
6 he served for this offense. That is not more than a year.
7 That does not qualify, therefore, for federal sentencing
8 purposes as a felony.

9 The important thing, I think, Your Honor, in
10 determining what's a felony is what have these people had
11 happen to them in the past? How should they take that
12 information going forward? And in this case where he has
13 not served more than that year, and the records don't
14 demonstrate that he served more than that year for this
15 offense, I don't believe that should be used as a valid
16 career offender predicate at his federal sentencing, Your
17 Honor.

18 THE COURT: Would you say at this point that your
19 argument depends on -- your argument -- to accept your
20 argument requires the Court to find that there's a slight
21 difference between what the Supreme Court held in the
22 *Carachuri-Rosendo*, if I've said that correctly, and those
23 cases and what the Fourth Circuit has ultimately held in
24 *Simmons*, or do you contend that *Simmons* is not binding on
25 this set of facts and to answer the question you go to

1 *Carachuri* and, therefore -- do you follow my question?

2 MR. JONES: I do, Your Honor. I think what I
3 would say is that *Rodriguez* started the recognition that we
4 should not be looking at hypotheticals, and
5 *Carachuri-Rosendo* ratified that and said don't look at
6 abstractions we have facts in front of us. And what *Simmons*
7 did is it said let's look at the North Carolina context, and
8 it tried to apply it. It said no longer assume what happens
9 to a hypothetical person. Go to the records. Go to the
10 judgments. Look at what this person was subject to based on
11 the documents.

12 And what I'm saying is if we fulfill
13 *Carachuri-Rosendo* and *Rodriguez* and look at the documents,
14 since we're already instructed to go to them, we should do
15 that analysis with the documents.

16 THE COURT: And no more hypothetical defendant.

17 Well, I will find that I to a certain extent -- I
18 don't know whether -- I can't say that I certainly
19 understand -- well, I certainly understand your argument,
20 and I think dealing with a hypothetical defendant at varying
21 levels -- under *Harp*, it was originally the maximum any
22 defendant could receive under the box for the specific class
23 felony without regard to criminal history. Then *Simmons*, in
24 applying *Carachuri-Rosendo* and other cases, came back and
25 held, no, it's the applicable class of felony limited by the

1 defendant's prior criminal history and the presumptive range
2 in that box. I assume if there were stipulations to the
3 aggravated factors, then maybe you could get to the
4 aggravated box in that fashion.

5 But as -- and so I am going to overrule the
6 objection and find that under *Simmons* and subsequent
7 precedent under the Fourth Circuit that I am to apply the
8 hypothetical -- I'm a little reluctant to refer to it as a
9 hypothetical defendant, although I understand your point on
10 that issue, but I am to -- in determining the statutory
11 maximum for the offense of conviction, I am to use the
12 presumptive range for the class of felony within the
13 appropriate criminal history category for Mr. Lloyd in this
14 case, that is, the specific defendant.

15 And with respect to paragraph 31, that was a Class
16 G felony with a prior record level of three, and that
17 presumptive imprisonment range carried a maximum penalty of
18 20 months; therefore, resulting in a proper classification
19 of -- or proper categorization of that conviction as a
20 career offender predicate.

21 And then with respect to paragraph 40, I find as
22 set forth in the presentence report. And although it was a
23 Class H felony, the defendant's prior record level was a
24 four resulting in a presumptive imprisonment range with the
25 maximum penalty as 14 months; therefore, qualifying that as

1 an appropriate career offender predicate offense.

2 So I will find -- I will overrule the objection.

3 I will find that Mr. Lloyd is properly classified as a
4 career offender for purposes of this guideline calculation.

5 And, let's see. With respect to the remaining
6 objection, that is, the plus four that was applied, I will
7 say, Mr. Jones, in this case absent -- Mr. Meinecke, I guess
8 I should say this for your benefit. It's really not clear
9 to me exactly who controlled the premises where the gun was
10 found -- let's see -- 9100 Tartan Road. Somewhere in here I
11 did -- I think it was in the pleadings, but I also thought
12 it was somewhere else that that was the mother's residence.
13 Although there was ammunition spread out all over the house,
14 at least the way I read the charge, it did look to me like
15 the drugs were in one bedroom, and the .32 caliber pistol
16 was found under the mattress in another bedroom. That
17 bedroom did contain tax documents belonging to the
18 defendant. But I thought somewhere --

19 MR. JONES: I think I might be able to offer what
20 I think Mr. Meinecke would agree, there were no actual --
21 March 25 was the day the search warrant occurred, and there
22 were no controlled substances found in the home at that
23 time. There had been a controlled purchase on March 21,
24 four days earlier, in which there was one rock, which, I
25 guess, being generous we could say maybe a 10th of a gram.

1 There was no indication about a firearm being present at
2 that time. That address is occupied both by Mr. Lloyd and
3 by Karen Lloyd, his mother, so the Court was right about --

4 THE COURT: It was in paragraph 63. He was
5 residing with his mother at 9100 Tartan Road in Laurinburg.
6 So I can't say that I'm satisfied that the gun, the time of
7 the possession, the criminal conduct, and control of the
8 premises clearly suggests that the plus four was properly
9 applied. So I am applying the career offender adjustment,
10 but I am -- at least for my purposes, the alternate
11 calculation is really moot at this point, and I'm not
12 inclined to make any findings or rest any sentence on his
13 possession of the firearm in connection with another felony
14 offense. Do you understand that?

15 MR. MEINECKE: And as the Court has said, given
16 the fact that the Court is going to apply the career
17 offender designation, we don't wish to be heard on the
18 Court's finding with respect to the "in connection with."

19 THE COURT: All right. I'll just -- I'll leave
20 that -- I'll find that it's moot for purposes of this
21 sentencing hearing.

22 Based upon the Court's finding with respect to the
23 career offender adjustment, I will adopt the presentence
24 investigation report without change. I'll note neither
25 count of conviction carries a mandatory minimum sentence.

1 The resulting advisory guideline calculation is as follows:
2 A total offense level of 29.
3 Criminal history category of six.
4 A guideline imprisonment range of 151 to 188
5 months.

6 A supervised release range of one to three years
7 as to both Counts One and Three.

8 A fine range of 15,000 to \$500,000.

9 And a special assessment of \$100 as to each count
10 is mandatory.

11 Will there be any additional evidence, Mr. Jones?

12 MR. JONES: Yes, Your Honor. I do have one
13 portion of the argument I was going to make towards the
14 3553(a) factors that included the presentation of four short
15 letters from supporters and family members. I'll hand those
16 up at the appropriate time.

17 THE COURT: All right. If you don't mind, I'll go
18 ahead and take them and have a look at them.

19 MR. JONES: Yes, Your Honor. I'll tell the Court
20 that I've handed a copy also to Mr. Meinecke.

21 THE COURT: All right. I'll hear from you at this
22 time as to what constitutes a sentence that is sufficient
23 but not greater than necessary taking into consideration the
24 advisory guideline calculation as well as all other factors
25 set forth under 18 USC Section 3553.

1 MR. JONES: Yes, Your Honor. Looking at the
2 advisory guideline range of 151 to 180 months in this case,
3 I believe a sentence of 120 months, which is a downward
4 variance, is sufficient and it's no greater than is
5 necessary to serve the goals of 3553(a) in this case for
6 Mr. Lloyd. He is an unusual individual and there are
7 unusual characteristics about this case that I think warrant
8 it.

9 I'd like first to turn the Court's attention
10 starting at paragraph 78 of the presentence report to what I
11 would describe as a lengthy history of legitimate work
12 throughout his life, throughout his adult life. Often in
13 these cases, we see people who have had no legitimate work
14 experience and support themselves solely by illegitimate
15 means, such as selling drugs. And I know we have an element
16 of that in this case, Your Honor; but starting in 1999,
17 Mr. Lloyd has worked nearly every single year. He's worked
18 in the service industry in restaurants, at hotels, at Ellery
19 Homestyles, at the packing plant in Laurinburg, and he has
20 throughout his entire adult life maintained jobs and worked
21 hard.

22 THE COURT: He's got something I've never seen
23 before. It's like -- I don't know any other way to describe
24 it. Each year there's a burst of employment for two, three,
25 four, five months, and then it comes to an end, and then he

1 comes back the next year. That's a very unusual employment
2 history. I'm not sure what to make of that.

3 MR. JONES: Well, I think what the Court should
4 make of it is it should read it right alongside with what's
5 laid out in the presentence report as his drug abuse
6 problems. It's hard, as we know, to do both. It's hard to
7 function when you're using drugs. But what we see in
8 Mr. Lloyd is a sustained effort to participate in society,
9 and Mr. Lloyd is not -- when we start looking at the conduct
10 that's involved here, Mr. Lloyd's not a large-scale drug
11 trafficker who is buying kilos of cocaine and cooking them
12 into crack and selling them for mass profit.

13 Mr. -- around the time of the offense, he was
14 working at the We Pack plant in Laurinburg and then at
15 Ellery Homestyles. He was a low end user who had a serious
16 drug problem, and he used and had powder and cocaine base.
17 He appears to me, Your Honor, to be an individual who was
18 using and selling, and that's what he told the officers when
19 they arrested him is that I have some, I use some, I sell
20 some. There's a demonstrated work history here that I think
21 is unusual and I think shows some -- gives the Court some
22 insight as to who Mr. Lloyd is. He's not a person who has
23 given up and is simply going to do what he wants to do.

24 He is unusual in the sense that he's incredibly
25 polite and pleasant to deal with and truly a loving person.

1 This Court actually noted at the Rule 11 plea hearing how
2 pleasant it was to conduct the hearing with him, and that's
3 the experience that I've had working with him. The officers
4 down there that had a lot of experience with him, and they
5 describe him as a gentleman. Every time they go to arrest
6 him for these offenses that show up, he's always been polite
7 and courteous, and he's never expressed anything other than
8 that throughout these proceedings, and I think that's
9 unusual as well.

10 The drug abuse is a serious issue, Your Honor, and
11 the presentence report notes it's been going on for a long
12 time. He has had several attempts to get it fixed in the
13 state Department of Corrections. I don't know why those
14 haven't taken, and part of those failures in the past, I
15 think, have led us to where we are now, but I do think that
16 is a factor to consider.

17 In addition to his work history along with the
18 drug habit, he has unusual family support. Not only is he
19 supported by his family -- and his mother Karen Lloyd and
20 Meagan Lloyd are here to support him and have been a huge
21 support throughout all these proceedings, but also letters
22 that the Court has, but he also -- the support goes the
23 other way. He supports them, and he supports his daughter
24 who's three years old.

25 This presentence report notes at paragraph 62 that

1 he's always paid his child support order. And it's not a
2 lot of money at \$50 a month, but there's plenty of people
3 who don't pay that, and he did pay that even when the
4 presentence report demonstrates that he didn't have a job.
5 So there are legitimate and illegitimate ways to make money
6 in this society, and we know he was doing both. I'll
7 suggest to the Court that there were some good things that
8 were being done with the legitimate money he was making.

9 In this case, Your Honor, from the very beginning
10 Mr. Lloyd has done everything he could to assist the
11 Government. Before this became a federal case, he talked
12 with the local agents down in Scotland County, maybe it was
13 the sheriff or maybe it was the State Bureau of
14 Investigation, some of the local authorities, and he gave
15 them detailed information about his sources, prices, and he
16 gave their names, where they lived, who they dealt with.
17 Nothing came of that information as far as we're aware. I
18 understand people have been arrested, but that information
19 is not of assistance to the federal government at this time
20 and no federal prosecutions have been made of it.

21 He also, when the federal charge was brought down
22 in January of this year, the very first thing he did was we
23 set up a meeting with, again, the local officers, and he
24 spoke again about everything he knew, every person, all the
25 sources, and all their contacts, and that information is

1 always considered to be credible information. Since he's
2 made his way into the marshal's custody, Your Honor, he's
3 kept his ears open, and he was debriefed in August of this
4 year about information he'd learned firsthand from
5 individuals there that committed a number of serious
6 robberies in the Greensboro area. I understand he's going
7 to be debriefed coming up in the next week or so regarding
8 the RICO case that's currently going on.

9 So he's done everything he could, Your Honor, but
10 there is in this case an unfortunate circumstance, and it's
11 something of a despaired opportunity, and that is he lives
12 in Scotland County, and there isn't a very large federal
13 presence in Scotland County. If this were a case that was
14 in Durham or Greensboro or Winston-Salem/Forsyth, there
15 would be many more opportunities, I believe, for his
16 information to be used by the federal authorities. There is
17 not this presence down in that part of the state, in that
18 part of the Middle District. There tend to be, in my
19 experience, more one-off kinds of cases. And so the exact
20 same information that in another county would have led to
21 excellent assistance to the Government, in this case, simply
22 because of his location and because of the federal presence
23 down there, or lack thereof, it hasn't played out that way.

24 I think what's more important is not that it
25 hasn't helped the Government, but what it shows about

1 Mr. Lloyd and what he's doing. He's a person who's always
2 tried to work. He's a person who's helped his family. He's
3 always tried to help his family, and from day one he's tried
4 to help the Government in this case.

5 If he is given a sentence even at the bottom of
6 the advisory guideline range of 151 months, that's
7 approximately 10 times greater than any other sentence he's
8 ever received. I suggest to the Court that that sentence in
9 this case would be more than is necessary to satisfy the
10 sentencing goals. A 120-month sentence that I've asked for,
11 Your Honor, is a very serious sentence. It's a 10 year,
12 double digit sentence. It's far greater than any amount of
13 time, and it takes him away from his family at a critical
14 time with a young daughter who he loves and supports.

15 And it does demonstrate -- it does serve the
16 purpose of deterrence, both specific and general. It does
17 provide just punishment for selling in this case what was,
18 as far as we know, one rock of crack. And he did admit to
19 the firearm in this case, possessing it, you know, on the
20 facts the Court has already talked about. He's demonstrated
21 acceptance of responsibility, but he's demonstrated
22 something more in his conduct since this case got started --
23 since the federal case got started, and I think that's
24 worthy of consideration, Your Honor.

25 In addition to that, I'd ask the Court to

1 recommend that he be allowed to participate in a drug abuse
2 treatment program. I believe he may be disqualified because
3 of the firearm possession count as well, but I'd ask the
4 Court to recommend it anyway because I know there's a
5 vigorous battle going on in the BOP about whether or not
6 precluding individuals with 922(g) counts is appropriate.
7 So I'd ask the Court to make that recommendation.

8 I'd also ask that the Court allow him to be placed
9 and recommend that he be placed in a facility as close to
10 his home in Scotland County as he -- as the Court can and as
11 the BOP can.

12 I would for all those reasons ask the Court to
13 impose 120 months for Mr. Lloyd for the two counts of
14 conviction here.

15 THE COURT: All right. Thank you, sir.

16 Mr. Meinecke?

17 MR. MEINECKE: Your Honor, we'd ask the Court to
18 impose a sentence not less than the bottom end of the
19 advisory guideline range, which, as I'm flipping my pages, I
20 believe is 151 months.

21 THE COURT: 151 to 188.

22 MR. MEINECKE: Yes, sir. The bottom of that range
23 would be 151, and by my math, which is always suspect, that
24 would represent about a 20 percent reduction from the top
25 end of the advisory guideline range; and, frankly, I'm a

1 little bit hesitant to voice our position in those terms
2 since it does represent a 20 percent break. If the Court
3 will bear with me, I'll go through the reasons that we
4 believe that sentence is appropriate and why it gives me
5 some pause to recommend a sentence at the low end.

6 First, we'd ask the Court to take into
7 consideration the defendant's criminal history. As you flip
8 through the pages of the presentence report, the Court can
9 see, and I'm sure already has seen, that there are a number
10 of prior convictions involving crimes of violence. There's
11 a breaking and entering conviction. There is a misdemeanor
12 conviction for assault on a female. There's a prior
13 conviction for a common law robbery which involved the use
14 of a firearm in order to threaten an individual to take
15 property from that person.

16 In addition to that criminal history related to
17 crimes of violence, there is long and protracted several
18 different instances of prior convictions for controlled
19 substance offense. As the Court knows, those are considered
20 serious offenses.

21 On top of that, stepping back for a moment, just
22 in the abstract, what we are struck with when you look at
23 this criminal history, is basically from the time the
24 defendant was 16 years old, it's difficult to find any
25 appreciable period of time in which the defendant wasn't

1 serving some sort of a sentence, wasn't under the
2 supervision of some court or just, in general, was not in
3 some sort of trouble.

4 Again, quickly looking through it, I think a
5 couple of years is the longest period of time I saw when I
6 looked through this history. So it's not just that there
7 are several different instances of convictions related to
8 crimes of violence or substance related convictions, but the
9 defendant has essentially been in trouble. He's been unable
10 to comply with the laws of the state or the federal
11 government since the time he was 16 years of age.

12 In addition, we'd ask the Court to take into
13 consideration the particular offense conduct. That's not
14 just the conduct as it relates to controlled substances, but
15 the Court understands from looking at the factual basis and
16 the presentence report that there's some evidence related to
17 this firearm. As you've already heard this afternoon, the
18 defendant admitted at some point in time -- I think his
19 exact words were that he handled the firearm on a previous
20 occasion; and interestingly, or at least interestingly to
21 the Government, included in the presentence report is
22 information related to the fact that when the residence was
23 searched, there was ammunition of multiple different
24 calibers. If I wrote this down correctly there was --

25 THE COURT: All over the place.

1 MR. MEINECKE: -- .22 caliber, .25 caliber, .32
2 caliber, .38 caliber, .45 caliber. Again, only one firearm
3 was recovered, but one would -- one asks, you know, what is
4 the purpose of having ammunition of all these different
5 calibers if you only have a firearm of one particular
6 caliber? Again, there's not evidence beyond that, but it
7 does concern the Government. There's certainly an inference
8 to be drawn after the defendant says he'd handled the
9 firearm and you have all this different kind of ammunition
10 that -- and given the defendant's history of use of firearms
11 in perpetrating other crimes, I'll just -- suffice it to say
12 that the Government is concerned by that evidence.

13 On top of that, I fully agree with Mr. Jones. I
14 couldn't agree more that from the outset, even prior to the
15 onset of the federal involvement in this case, the defendant
16 has cooperated with the Government. He's provided
17 information about a number of possible criminal offenses
18 that are being investigated by more than one law enforcement
19 agency, and it's accurate to say at this point in time none
20 of those investigations have come to fruition. I don't
21 believe anybody has yet been arrested.

22 However, taking that into account, I get back to
23 where I started. The Court knows from its experiences that
24 in cases where defendants cooperate and the Government files
25 a motion under -- a 5K motion for reduction of sentence,

1 typically those recommendations range anywhere from 20 or
2 25 percent up to 50 percent, and the 50 percent is almost
3 entirely reserved for individuals that actually have to come
4 into the courtroom and testify.

5 So when I started out this sentencing argument by
6 saying we'd ask the Court not to go lower than the low end
7 of the advisory guideline range, that is with the
8 understanding that the bottom end of the advisory guideline
9 range already represents a 20 percent reduction from the
10 high end that probation has recommended; and but for the
11 defendant's cooperation, that's the sentence I would argue
12 to the Court based upon the offense conduct and his criminal
13 history.

14 So if I haven't made it too complicated, what I'm
15 saying is that we think that recommending a 20 percent
16 reduction off of what we would otherwise argue for is a
17 sufficient acknowledgment of the defendant's cooperation
18 that he's provided at this point in time, and we'd ask the
19 Court not to impose a sentence less than 151 months.

20 THE COURT: All right. Mr. Jones, one thing that
21 I was sitting up here thinking about, the child support
22 factor did strike me exactly right. It's not often that
23 people are current on child support, but I am left with that
24 unusual dichotomy of, at least for some periods of life,
25 that \$50 a month was coming from the sale of drugs, and does

1 that -- does the child support -- current in child support
2 mitigate, nonfactor, or aggravate it based on where the
3 money's coming from?

4 MR. JONES: I believe it mitigates, Your Honor.
5 It's not right to break the law. It's not right to sell
6 drugs. But I think there are shades of mitigation, and
7 there's shades of aggravation, and a person who's selling --
8 there are different ways in which one can sell drugs. You
9 can get involved to different degrees and different extents,
10 and I think the laws reflect that if you look at different
11 substances. If you look at the way we treat marijuana and
12 some drugs, we hardly punish in this state simple users of
13 it. We also greatly punish people who traffic in it.

14 THE COURT: School zones, guns, with or without
15 guns, etc.

16 MR. JONES: That's right. So there's a gradation
17 there. And I think if you look at someone who has small
18 amounts and selling small amounts and is doing good things
19 with them, that falls, to me, in the very low end. I
20 mean -- I don't know if you have to say it mitigates, Your
21 Honor, but I think it gives you some insight as to who this
22 individual is that's sitting next to me, and that
23 distinguishes him from somebody who's a key player in a
24 large trafficking organization. And when you look at those
25 against each other, I would say, yes, that does mitigate in

1 that sense.

2 What I think about, Your Honor, how does -- it's
3 difficult to say what an additional 31 months in this case,
4 how that protects or how that shows more deterrence, how
5 that punishes and shows appropriate punishment more. I
6 think 151 months would be sufficient, but I also think it
7 would be greater than necessary. I think 121 months or 120
8 months would be sufficient and no greater than necessary.

9 The advisory guidelines are just that. They're a
10 good place to start, for the courts to look at the
11 individual who's in the chair next to me and see who we see
12 in the presentence report, and then ask of him what would be
13 sufficient and not greater than necessary; and I contend,
14 Your Honor, that 120 months would do that for Mr. Lloyd and
15 satisfy the 3553(a) purposes of sentencing.

16 THE COURT: All right. And, by the way, you said
17 sitting behind him was his mother and did you say Meagan?

18 MR. JONES: Yes, Meagan.

19 THE COURT: Who is she?

20 MR. JONES: I don't believe they are -- I would
21 describe them as common law marriage, Your Honor.

22 THE COURT: Okay. I'm sorry, I missed that. I
23 didn't put the name together in the presentence report.
24 Ms. Lloyd, Meagan, thank you both for coming up here today.
25 I know that it's a long ways from Laurinburg to Greensboro,

1 and it's the middle of the week, and it's the middle of the
2 afternoon pulling you away from your work and various other
3 responsibilities, but it does mean a lot to me that you all
4 would take the time to come up here for Mr. Lloyd today, and
5 I know it means a lot to him, too. So thank you both for
6 your time.

7 Mr. Lloyd, you're not required to say anything.
8 If you choose to remain silent, your silence will not be
9 held against you in any way whatsoever, but you do have the
10 right to address the Court before any sentence is imposed.
11 And if you wish to address the Court, now is the appropriate
12 time.

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Let me see probation up
15 here briefly.

16 (Bench conference with probation.)

17 THE COURT: Well, in Mr. Lloyd's case, taking into
18 consideration the advisory guideline calculation as well as
19 all other factors set forth under 18 USC Section 3553, I
20 find that a sentence within the guideline range of 151
21 months, the low end of the guideline range, is sufficient
22 but not greater than necessary.

23 In fashioning that sentence, I have taken into
24 consideration the advisory guideline calculation, the
25 factors set forth under 18 USC Section 3553, and the

1 arguments of counsel in this case. Mr. Jones makes a very
2 persuasive case on behalf of Mr. Lloyd for a variance in the
3 case, pointing out, I think, fairly and accurately
4 Mr. Lloyd's cooperation with the United States in this
5 matter, even though that has not become or risen to a level
6 for which substantial assistance pleadings would otherwise
7 be filed.

8 Furthermore, I do weigh very heavily the fact that
9 Mr. Jones [sic] has been -- is current on his child support
10 and does appear in many respects as reflected by the letters
11 and other factors to be a very caring individual and one who
12 is at least accepting and acting appropriately upon some of
13 his personal responsibilities, and I commend Mr. Jones [sic]
14 for those -- all of those matters.

15 However, I do find that in looking at the history,
16 and particularly -- or the nature and circumstances of the
17 offense, as well as the history and characteristics of the
18 defendant, particularly the defendant's prior criminal
19 record, that Mr. Jones' [sic] -- the repeated nature of
20 Mr. Jones' [sic] criminal activity, all as pointed out by
21 the probation officer in the justification section as well
22 as the -- taking into consideration Mr. Lloyd's prior past
23 criminal conduct and, therefore, although not scientifically
24 certain, but trying to determine the risk of Mr. Lloyd
25 continuing to commit these offenses of the same type that he

1 has committed in the past, meaning the need to protect the
2 public from further crimes of the defendant. Mr. Lloyd's
3 prior sentences were insufficient to deter his criminal
4 conduct, as were arrests. I think at least in one instance
5 Mr. Lloyd was committing new criminal conduct after having
6 been arrested for the offenses which were -- ultimately
7 became the charges in this case.

8 So taking into consideration all of those factors,
9 but predominantly the seriousness of Mr. Lloyd's criminal
10 history by its repeated nature as well as the need to
11 protect the public from further crimes of the defendant, I
12 find that a sentence of 151 months is sufficient but not
13 greater than necessary. So I will impose that sentence
14 followed by three years of supervised release.

15 Let me see, I will not impose a fine.

16 And I will recommend that Mr. Lloyd be designated
17 to a facility as close to his home as possible; that he
18 receive intensive substance abuse treatment; and that he be
19 designated to a facility where he may participate in the
20 inmate financial responsibility program.

21 Supervised release will be on the terms and
22 conditions set forth in the presentence report.

23 Mr. Jones, is there anything further you wish to
24 address before I impose that sentence?

25 MR. JONES: No, Your Honor. After you impose it,

1 I would note there's a count to be dismissed.

2 THE COURT: All right. Mr. Lloyd, if you will
3 stand then, please, sir. In Case No. 1:12CR23-1, United
4 States of America versus Antwan O'Brian Lloyd, as to
5 Count One, it is hereby ordered that the defendant is
6 committed to the custody of the Bureau of Prisons for a term
7 of 120 months followed by three years of supervised release.
8 A special assessment of \$100 is mandatory, is due and
9 payable immediately, and is hereby imposed. A fine is
10 waived because of defendant's inability to pay, and
11 restitution will not be imposed in this case.

12 The Court does recommend to the Bureau of Prisons
13 that the defendant be designated to a facility as close to
14 his home as possible; to a facility in which he may
15 participate in an intensive substance abuse treatment
16 program; and, furthermore, to a facility where he may
17 participate in the inmate financial responsibility program
18 for the purpose of paying any monetary penalties.

19 As to Count Three, it is hereby ordered that the
20 defendant is committed to the custody of the Bureau of
21 Prisons for a term of 31 months. That sentence is imposed
22 to run consecutively to the sentence imposed as to Count One
23 followed by three years of supervised release which shall
24 run concurrently. A special assessment of \$100 is due and
25 payable immediately and is imposed as to Count Three.

1 During the period of supervised release, it is
2 ordered that the defendant shall comply with the standard
3 terms and conditions of supervised release. In addition to
4 the standard terms and conditions, the following special
5 conditions are imposed:

6 One, the defendant shall provide any requested
7 financial information to the probation officer.

8 Two, the defendant shall submit to substance abuse
9 testing at any time as directed by the probation officer.
10 The defendant shall cooperatively participate in a substance
11 abuse treatment program which may include drug testing and
12 inpatient or residential treatment and pay for those
13 treatment services as directed by the probation officer.
14 During the course of any treatment, the defendant shall
15 abstain from the use of any alcoholic beverages.

16 And, three, the defendant shall submit his person,
17 residence, office, vehicle, or any property under his
18 control to a warrantless search. Such a search shall be
19 conducted by a United States Probation officer at a
20 reasonable time and in a reasonable manner based upon a
21 reasonable suspicion of contraband or evidence of a
22 violation of a condition of release. Failure to submit to
23 such a search may be grounds for revocation, and the
24 defendant shall warn any residents that his premises may be
25 subject to such searches.

1 Mr. Lloyd, you do have the right to appeal the
2 sentence that I have imposed in this case. If you choose to
3 appeal, notice of appeal must be filed within 14 days of the
4 entry of judgment. If you wish to appeal and cannot afford
5 the services of counsel, counsel will be appointed to
6 represent you. Mr. Jones will be responsible for advising
7 you with respect to your right to appeal and filing a notice
8 of appeal if you instruct him to do so.

9 Anything further, Mr. Jones?

10 MR. JONES: I move to dismiss Count Two, Your
11 Honor.

12 THE COURT: The remaining counts are dismissed
13 pursuant to -- any remaining counts are dismissed pursuant
14 to the terms of the plea agreement. Mr. Meinecke?

15 MR. MEINECKE: Your Honor, we would ask for a
16 destruction order with respect to the firearm, ammunition,
17 controlled substances, and drug paraphernalia once the
18 period for appeals has expired.

19 THE COURT: I'll order the destruction of any
20 controlled substances and ammunition seized at the
21 conclusion of any appeals period. I'll order the firearm be
22 returned to a lawful, rightful owner if one can be located
23 upon the exercise of reasonable efforts by the United
24 States; and, if not, that the firearm be destroyed at the
25 conclusion of the appeals period.

1 MR. JONES: And, Your Honor, I don't mean to --
2 when we say "the conclusion of the appeals period," do we
3 mean the conclusion of direct appeals and time for filing
4 cert or also a one-year AEDPA.

5 THE COURT: Yeah, I generally consider the appeals
6 period to be the direct appeals period to the Fourth Circuit
7 and petition for cert time. Is there some reason I should
8 extend that out?

9 MR. JONES: If I could just ask that we have one
10 year additional for AEDPA in case my client should wish to
11 file a 2255 making some constitutional claim. I mean, it's
12 an easy -- it's an easy amount to add on to direct appeals.
13 It's known, and we see a lot of 2255s.

14 THE COURT: Mr. Meinecke?

15 MR. MEINECKE: It does create the additional
16 issue -- in this case, the evidence is not voluminous. But,
17 of course, this is -- if this is the pattern that we follow,
18 then eventually we do have that issue to confront. I'd ask
19 the Court to deny the request and leave the one-year time
20 period for direct appeals.

21 THE COURT: The burden is going to fall to the
22 agency because they're the ones that are storing the -- I
23 guess, I assume the agency's the one that's still got the
24 evidence in storage.

25 MR. MEINECKE: Yes, sir.

1 MR. JONES: I don't think for this case we need to
2 concern ourselves too much with long-term storage issues.
3 We're talking about a tiny amount here, and --

4 THE COURT: Yeah. Here's what I'm going to do.
5 I'm going to leave it as it stands right now to the standard
6 through the appeals period; but, Mr. Jones, if -- I
7 certainly -- I won't sign the judgment for a little while.
8 If you want to file something and think you can convince me
9 that it needs to be longer than that -- and I'm not saying
10 you can't. I see the merit immediately of saving everything
11 until everything is resolved. On the other hand, if I start
12 in this case, then it'll start in every case, and we will
13 end up with two, three, four years of material stored up for
14 a while.

15 MR. JONES: I'll tell the Court I have nothing
16 further to file. I do think we'll end up with one year more
17 because that's how long you get under AEDPA. I think
18 there's a hypothetical question about if you could overcome
19 your bars, your procedural bars on your 2255 --

20 THE COURT: I know --

21 MR. JONES: -- in theory, the time is forever.
22 But I'm just asking until that one-year time period to
23 initially file the 2255.

24 THE COURT: And if the appeal is filed, then
25 you've got all that appeals time lumped in there, too, so

1 you could end up with the one year --

2 MR. JONES: But that's part -- as I understand,
3 Your Honor, that's already part of the order.

4 THE COURT: Right. Oh, I see what you're saying.
5 If he appeals, we're going to count that anyway. I'm going
6 to decline your invitation on that issue, but --

7 MR. JONES: Yes, Your Honor.

8 THE COURT: -- I see the concern, and I'll
9 certainly -- there's good reason to do it. Don't give up
10 just yet. Maybe there'll be some good reason for it. I'm
11 going to decline today, but we'll see.

12 Anything further?

13 MR. MEINECKE: Not on behalf of the Government,
14 Your Honor.

15 THE COURT: All right. Mr. Lloyd, good luck to
16 you, sir.

17 THE DEFENDANT: Thank you.

18 THE COURT: We'll stand in recess. We'll stand
19 adjourned until tomorrow morning at 9:30.

20 (At 3:36 p.m., break taken.)

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C E R T I F I C A T E

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4 I, JOSEPH B. ARMSTRONG, RMR, FCRR, United States

5 District Court Reporter for the Middle District of North
6 Carolina, DO HEREBY CERTIFY:7 That the foregoing is a true and correct transcript of
8 the proceedings had in the within-entitled action; that I
9 reported the same in stenotype to the best of my ability;
10 and thereafter reduced same to typewriting through the use
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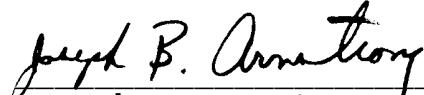
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Date: 01/25/13



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